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Middleton

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Gregory H. Smith
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September 2, 2004

OFFICES IN:
MANCHESTER
CONCORD
PORTSMOUTH

Michael Sclafani, Appeals Clerk
Water Council
c/o Department of Environmental Services, Water Division
6 Hazen Drive
P.O. Box 95
Concord, New Hampshire 03302-0095

RECEIVED

SEP 03 2004

Re: Tourrettes Trust
Administrative Order No. WD 04-012

Dear Mr. Sclafani:

This is to notify the Water Council that upon the withdrawal by the Department of Environmental Services of the Administrative Order No. WD 04-012, issued by the Department on July 2, 2004, the appeal of that Order will be withdrawn in accordance with the terms of the attached Settlement Agreement.

I am submitting an original and twenty (20) copies of this letter with enclosure in accordance with the rules of the Council.

Copies of this letter are also being provided to Michael Nolin, Commissioner, and Harry T. Stewart, Water Division Director.

Respectfully submitted,


Gregory H. Smith

GHS:twf

cc with enclosure:

Michael Nolin, Commissioner
Harry T. Stewart, Director
Jennifer J. Patterson, Senior Assistant Attorney General

THE STATE OF NEW HAMPSHIRE
WATER COUNCIL

In re: Tourrettes Trust Appeal
Docket No. 04-16 WC

SETTLEMENT AGREEMENT AND RELEASE

NOW COME the State of New Hampshire Department of Environmental Services ("DES" or "State"), by and through its counsel the Office of the Attorney General, and Tourrettes Trust, by its Trustee, Ian Ferguson (collectively, "Appellants") by and through its counsel, McLane, Graf, Raulerson & Middleton (collectively, "the Parties"), and in full settlement of all claims between the Parties raised by the Administrative Order and in this appeal agree as follows:

WHEREAS, the Parties wish to avoid protracted litigation of the action and intend to permanently settle and compromise any and all claims, causes of actions and/or complaints that the Parties have or may have relating to the claims that form the basis for the Administrative Order and this appeal.

NOW, THEREFORE, for and in consideration of the terms herein, the Parties agree as follows:

1. Effective August 30, 2004, DES will withdraw Administrative Order No. AO WD 04-012, which is the subject of this appeal.
2. The Parties agree that upon withdrawal of the Order, this appeal may be dismissed as moot.
3. DES agrees that so long as the dwelling structure at issue in the appeal is built in conformity with the foot print of the primary structure within fifty (50) feet

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of the reference line as depicted on the plans approved in July 2002 by the Town of Wolfeboro, the State will not pursue any further enforcement action under the Shoreland Protection Act, RSA 483-B ("Act") against appellants with respect to the structure's setback or height.

4. The State reserves all rights, of enforcement and otherwise, with respect to any and all other issues, including any other violations of the Act which may arise on the property unrelated to the height or setback of the structure at issue in this appeal. The State is aware of no such issues at the present time.

5. The Parties, on behalf of themselves, their agents, successors, heirs and assigns, fully and forever release, discharge and covenant not to pursue any further legal action against each other, including the State or any of its agencies, officials or employees based on the issuance of the Order, the conduct of the appeal litigation or any related action or inaction with respect to the dwelling structure at issue in this appeal. This release includes any and all claims for damages, liabilities, causes of action, debts, claims or demands, including attorney's fees, in any way arising out of the events that gave rise to this appeal.

6. The Parties acknowledge and agree that this Agreement is a general release and discharge. Appellants further agree that they accept the actions and releases specified herein as a full and complete compromise of all claims against the State in the appeal.

7. Appellants agree and acknowledge that this matter involves disputed issues of law and fact. Appellants further agree that nothing contained in this

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Agreement shall constitute an admission of liability or wrongdoing by the State, by whom liability is expressly denied.

8. By executing the Agreement, the Parties represent that they have relied upon the advice of their attorneys, , and that they have read, fully understand, and accept the terms of this Agreement..


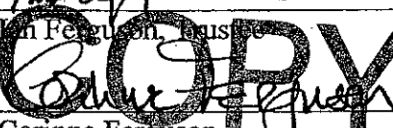
9. The Agreement shall be deemed to have been entered into in the State of New Hampshire and shall be construed and interpreted in accordance with the laws of the State of New Hampshire.

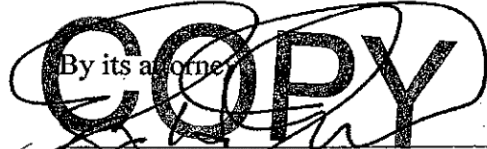
28 August 2004
Date

28 August 2004
Date

August 30, 2004
Date

FOR APPELLANT:

COPY
Toilettes Trust

Ian Ferguson, Trustee
COPY

Corinne Ferguson

COPY
By its attorney

Gregory H. Smith
McLane, Graf, Raulerson
and Middleton, P.A.
15 North Main Street
Concord, New Hampshire 03301

STATE OF NEW HAMPSHIRE
Department of Environmental Services

By its attorneys,

Kelly A. Ayotte
Attorney General

8/30/04
Date

Jennifer L. Patterson
COPY
Jennifer L. Patterson
Senior Assistant Attorney General
Environmental Protection Bureau
33 Capitol Street
Concord, New Hampshire 03301